

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 1203
<u>THIS DOCUMENT RELATES TO</u>	
JANICE BINION, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20119
LILLIAN CHANDLER, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20120
LINDA HARMON, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20082
PATRICIA MOSLEY, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20122
DUWANDA ROBBINS, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20081
MARY F. SANDERS, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20121
BRENDA STALLINGS, et al. v. WYETH-AYERST PHARMACEUTICALS INC., et al.	CIVIL ACTION NO. 02-20118

PRETRIAL ORDER NO.

AND NOW, this day of August, 2004, for the reasons set forth herein, it is hereby ORDERED that:

(1) the motions of plaintiffs to remand in the seven above-captioned actions are DENIED;

(2) all defendants in the seven above-captioned actions except Wyeth-Ayerst Pharmaceuticals, Inc., Wyeth Laboratories, Inc., A.H. Robins Co. Inc., and American Home Products Co., Inc. are DISMISSED;

(3) the motion by defendant Fred's of Tennessee to withdraw and substitute counsel (Doc. #19) in Binion v. Wyeth-Ayerst Pharmaceuticals, Inc., et al., CIV. A. No. 02-20119 (E.D. Pa.) is DENIED as moot;

(4) the motion by defendant Hamilton Pharmacy for substitution of counsel (Doc. #16) in Harmon v. Wyeth-Ayerst Pharmaceuticals, Inc., et al., CIV. A. No. 02-20082 (E.D. Pa.) is DENIED as moot;

(5) the motion by defendant Super-Sav-On-Drugs of Mississippi, Inc for substitution of counsel (Doc. #21) in Sanders v. Wyeth-Ayerst Pharmaceuticals, Inc., et al., CIV. A. No. 02-20121 (E.D. Pa.) is DENIED as moot;

(6) the motion of plaintiffs to stay Wyeth's motion to dismiss certain plaintiffs pending this court's ruling on the motions of plaintiffs to remand is DENIED as moot;

(7) the motion of plaintiffs for extension of time to respond to Wyeth's motion to dismiss certain plaintiffs is GRANTED;

(8) plaintiffs shall have twenty (20) days to file and serve opposing briefs to Wyeth's motion to dismiss, including the issues of eligibility of plaintiffs to proceed with their claims; and

(9) Wyeth shall have fourteen (14) days to file and serve a reply brief in support of its motion to dismiss.

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These seven complaints were originally filed by Mississippi citizens in various Mississippi state courts in the months of August or October, 2001. The defendants include Wyeth, the manufacturer of the diet drugs Pondimin and Redux, phentermine manufacturers, and in-state pharmacies which allegedly filled plaintiffs' prescriptions for Pondimin and/or Redux. Some of the defendants, including Wyeth and its related companies, are of diverse citizenship while others are not. There are no federal claims alleged. Wyeth timely removed these actions to the federal district court for the Southern District of Mississippi. These cases were then transferred to this court as part of MDL 1203.

For the reasons set forth in Memorandum and Pretrial Order ("PTO") No. 3339 in Jamison, et al. v. Wyeth, et al., CIV. A. No. 03-20317 (E.D. Pa. Mar. 5, 2004) with respect to the pharmacy defendants, and PTO No. 2567 in Anderson v. Am. Home Prods., Co., 220 F. Supp. 2d 414 (E.D. Pa. 2002) with respect to the phentermine defendants, we find and conclude that all defendants except Wyeth and its related companies are fraudulently joined to avoid federal subject matter jurisdiction. Accordingly, we are denying plaintiffs' motions to remand.

BY THE COURT:

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J.